



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1991

Ms. Evelyn Conner Hicks
Attorney
Dallas Independent School District
1845 Woodall Rodgers Freeway
Suite 1660, LB 14
Dallas, Texas 75201

OR91-565

Dear Ms. Hicks:

As attorney for the Dallas Independent School District, you ask whether a draft report of Texas Education Agency's accreditation visit to the school district is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12184.

You claim that TEA's preliminary draft of the accreditation report is excepted from required public disclosure by section 3(a)(11) of the Open Records Act, which provides as follows:

(11) inter-agency or intra-agency memorandums or letters
which would not be available by law to a party in litigation with
the agency.

The purpose of this section is "to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies." Open Records Decision No. 538 (1990) at 1. A school district may claim section 3(a)(11) for records or portions of records that contain opinion, advice, or recommendation. *See, e.g.,* Open Records Decision No. 219 (1978).

A previous determination of this office, Open Records Decision No. 559 (1990), a copy of which is enclosed, resolves your request. This decision states in part:

[W]here a document is genuinely a preliminary draft of a
document that has been released or is intended for release in a

final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document. To the extent the content of the preliminary draft has appeared in the final version, it is already on the public record. The release of an edited version of the preliminary draft that includes only material incorporated into the final draft would not make more of the subject matter available to the public. It would, however, reveal something about the deliberative process by indicating where additions and deletions were made in the preliminary draft as it was reviewed. [Citations omitted.] Thus, the draft itself, as well as comments made on the draft, underlining, deletions, and proofreading marks would qualify for exception under section 3(a)(11).

Open Records Decision No. 559 at 2.

Severable factual matter must be released, but where such factual matter is contained in the final version of the document, the release of the final version would satisfy this requirement. *Id.* A brief submitted by Texas Education Agency states that the final report is an open record. If the final accreditation report has been released, the school district may comply with the request by providing a copy of the final report. If the final report is not yet available, then the district must make severable factual information available to the requestor.

Since case law and prior published open records decisions resolve your request, we are informing you of our determination in this informal letter ruling rather than by published open records decision. If you have questions about this ruling, please refer to OR91-565.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/mc

Ref.: ID# 12184, 12583

Enclosures: Open Records Decision Nos. 219, 538, 559
Submitted documents

cc: Mr. Joseph Garcia
Staff Writer
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